

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO.13229 of 2007

Date:14.08.2007

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Between:

Visakhapatnam Municipal Corporation
Non Public Health Employees Cooperative
Thrift and Credit Society Limited.

...Petitioner

And

The Commissioner for Cooperation and Registrar
of Cooperative Societies and another.

...Respondents

ORDER:

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The petitioner is a Cooperative Credit Society registered under the A.P. Cooperative Societies Act, 1964 (for short 'the 1964 Act'). It filed an application before the second respondent with a request to permit its conversion into the one, under the A.P. Mutually Aided Cooperative Societies Act, 1995 (for short 'the 1995 Act'). The second respondent issued proceedings, dated 11.05.2006, returning the application of the petitioner on the ground that the first respondent issued instructions through memo, dated 20.08.2005, not to entertain any applications for conversion. The petitioner challenges the memo, dated 20.08.2005, issued by the first respondent and consequential proceedings, dated 11.05.2006, issued by the second respondent.

It is contended that once the 1995 Act permits the

conversion of a society under the 1964 Act, there was absolutely no basis for the first respondent to issue the impugned memo. It is also urged that the object of the impugned memo is to nullify the provisions of the 1995 Act.

The second respondent filed a counter-affidavit. It is stated that as long as the memo issued by the first respondent is in operation, the application of the petitioner cannot be entertained.

Heard the learned counsel for the petitioner and the learned Government Pleader for Cooperation.

The petitioner-society was registered under the 1964 Act in the year 1998. The State Legislature enacted the 1995 Act providing for registration of societies with different legal consequences. Section 4(1) of this Act prescribes the procedure for registration of the Societies under that Act. It reads as under:

“REGISTRATION: Where not less than ten individuals each being a member of a different family intend to form a Cooperative Society, or two or more a Cooperative Societies registered under this section wish to form into a federation, or a society registered under Section 7 of the Andhra Pradesh Cooperative Societies Act, 1964 intends to convert itself into a Cooperative Society under this Act, they shall frame bye-laws for this purpose in accordance with Section 3 in the first instance.”
(remaining part of the Section is omitted since it is not relevant for the purpose of this case)

From this, it is evident that not only a new society can be brought into existence, on an application submitted by ten individuals, but also a society, which is already registered under

Section 7 of the 1964 Act get converted into a Mutually Aided Cooperative Society. The first respondent is placed under obligation to ensure proper working of both the enactments. Curiously, he has issued the impugned memo, dated 20.08.2005, directing the District Cooperative Officers not to entertain any proposals for registration of the societies by conversion from those under Section 7 of the 1964 Act into the ones under the 1995 Act. This Court expressed its utter displeasure about the action taken by the first respondent, which has the effect of scuttling the operation of an enactment. Realizing the gravity of the matter, the first respondent issued proceedings in R.C.No.19843/2007/MACS, dated 10.08.2007, withdrawing the memo, dated 20.08.2005. Further, certain guidelines were issued to the District Cooperative Officers which are to be followed while examining the applications for conversion of the societies from the purview of the one enactment to the other.

Here again, certain vague and subjective terms such as 'viable' and 'genuine' were employed which would clothe the registering authority with unbridled power. When Section 4(1) of the 1995 Act is clear in its purport in the matter of registration of societies, the first respondent cannot restrict it. With the withdrawal of the memo, dated 20.08.2005, the grievance of the petitioner stands redressed. Now, it is for the second respondent to pass fresh orders strictly in accordance with Section 4 of the 1995 Act.

Hence, the writ petition is disposed of, leaving it open to the

petitioner to make a fresh application to the second respondent and the latter, in turn, shall consider the same strictly in accordance with the provisions of Section 4 of the 1995 Act and the relevant Rules framed thereunder. The expressions such as 'viable' and 'genuine' employed in the proceedings, dated 10.08.2007, shall be ignored by the registering authority in the process. There shall be no order as to costs.

14.08.2007

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